



**Commonwealth of Virginia  
Virginia Information Technologies Agency**

**CELLULAR TELEPHONE SERVICES**

**MANDATORY USE CONTRACT**

**DATE:** December 4, 2003

**CONTRACT #:** VA-020901-ALTL

**VENDOR:** Alltel  
9201 Arboretum Parkway  
Suite 200  
Richmond VA, 23236

**FIN #:** 340868285

**CONTACT** Mr. Paul Hoppes  
Telecommunications Division  
Department of Information Technology  
804/371-5580

**TERM:** September 17, 2002 – September 16, 2004

**DELIVERY:** 15 Days for Equipment

**FOB:** Destination

**PAYMENT:** 30 Days

**Technical Information:**

Mr. Paul D. Hoppes  
Telecommunications Division, DIT  
804/371-5580  
[paul.hoppes@vita.virginia.gov](mailto:paul.hoppes@vita.virginia.gov)

NOTE: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this agreement.

NOTE: Toll free trouble reporting number, 1-800-473-2355, or 611 from a cellular phone.

NOTE: Use of this contract by State Agencies and Institutions of Higher Education is **MANDATORY**, and is optional for Localities and other public bodies.

## EXTRACT CHANGE LOG

Effective  
Date

## ORDERS

### **ALL ORDERS FOR SERVICES SHALL BE SENT TO:**

MR. PAUL HOPPES  
VITA  
110 SOUTH 7<sup>TH</sup> STREET  
FIRST FLOOR  
RICHMOND, VA 23219  
804/371-5580

Telecommunications Services Request Form can be found on our website:

<http://www.vita.virginia.gov/docs/forms/tsrChoice.cfm>

Ordering, billing and vendor invoice reconciliation for **SERVICES** will be handled by VITA

### **ORDERS (EQUIPMENT)**

Authorized ordering officials representing the “Authorized Users” of this Contract may order Equipment from this Contract by one of the following Order methods:

- A. eVA
- B. Purchase Order: An official Purchase Order form issued by an Authorized User.
- C. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT; or its replacement as identified by the COV Legislature.
- D. Charge/Credit Card:
  - 1) Any order/payment transaction processed through the Commonwealth’s contract with American Express (AMEX). Each Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
  - 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, which is under contract for use by an Authorized User.

All orders for **EQUIPMENT** shall be issued by the individual agency, institution or other public body requesting the equipment. The Contractor shall deal directly with the user for all matters concerning delivery, payment, warranty and follow on maintenance support.

For Rate Information: <http://www.asd.virginia.gov/contract/cellular/default.asp>

## **PRIME CONTRACTOR RESPONSIBILITY**

**If the Contractor's proposal includes any goods or Services to be supplied by another party, the Contractor shall act as prime contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.**

## COMMONWEALTH OF VIRGINIA RATE PLANS

Page T-1

		<b>Table 1 (Continued)</b>			
		<b>to Attachment "A"</b>			
		<b>Contract VA-020901-ALTL</b>			
<b>COMMONWEALTH OF VIRGINIA EQUIPMENT AND ACCESSORIES PRICE LIST</b>					
<b>Item</b>	<b>Model</b>	<b>Manufacturer</b>	<b>Description</b>	<b>Lease or Purchase</b>	<b>Unit Price</b>
<b>Zones 1 - 8 (except Zone 4)</b>	<b>5185i</b>	<b>Nokia</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 49.95</b>
<b>Cingular</b>	<b>5165</b>	<b>Nokia</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 49.95</b>
<b>Zone 1, 2, 3, 6, and 8</b>	<b>5135</b>	<b>Kyocera</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 99.95</b>
<b>Zone 5</b>	<b>3285</b>	<b>Nokia</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 99.95</b>
<b>Zone 7</b>	<b>V120</b>	<b>Motorola</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 99.95</b>
<b>Cingular</b>	<b>3360</b>	<b>Nokia</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 99.95</b>
<b>Zones 1, 2, 3, 5, 6, and 8</b>	<b>270c</b>	<b>Motorola</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 149.95</b>
<b>Zone 7</b>	<b>V60</b>	<b>Motorola</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 149.95</b>
<b>Cingular</b>	<b>8260</b>	<b>Nokia</b>	<b>tri-mode phone</b>	<b>purchase</b>	<b>\$ 149.95</b>
<p>During the duration of the contract, handsets may be replaced with new models. ALLTEL will, at all times, provide handsets that fall into the category of good, better and best standards. ALLTEL does provide additional models within each category that may vary in price due to features and functionality of the handsets. Please contact your local state representative for pricing information.</p>					
	<b>Accessories</b>	<b>Price</b>	<b>Zones</b>		
	Cigarette Lighter Adapters	\$ 25.00	All		
	Cases/Belt Clips/Holsters	\$ 15.00	All		
	Headset	\$ 30.00	All		
	Desktop Charges	\$ 65.00	All		
	Batteries- standard lithium ion	\$ 60.00	All		
	Hands Free Car kits	\$ 175.00	All		
	Zero-install hands free car kits	\$ 85.00	All		
Additional accessories that are on the above list are also available.					
Please contact local state representative for pricing information.					

**MODIFICATION #5  
TO  
CONTRACT NUMBER VA-020901-ALTL  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
ALLTEL COMMUNICATIONS**

This MODIFICATION #5 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency) and ALLTEL COMMUNICATIONS, hereinafter referred to as "Contractor" relating to the modification of Contract VA-020901-ALTL, as amended. This Modification #5 is hereby incorporated into and made an integral part of Contract VA-020901-ALTL.

Both of the above referenced parties agree to the following:

**1. Reference: Page 16, paragraph 50 entitled "Modifications":**

Effective as of the date of execution of this Modification #5 by both above-referenced parties, all references made to "Department of Information Technology" or "DIT" shall refer to "Virginia Information Technology Agency" or "VITA." Both parties agree that although the name of VITA has changed, from the name Department of Information Technology to Virginia Information Technology Agency, all Contract duties and obligations of the Contractor and the State have not changed.

**2. Reference: Page 13; paragraph 41, entitled "Price Protection And Most Favored Customer" and the section entitled "Fees" in Table 1 to Attachment A, page 25 of 29 of Contract VA-020901-ALTL.**

Both parties hereby agree to revise the Federal Universal Service fee ("FUSF") as delineated below:

<u>Provider</u>	<u>Zone(s)</u>	<u>FUSF Rate</u>
Alltel	1, 2, 3, 6, and 8	2.622%
Cingular	4	2.622%
US Cellular	7	2.622%
Virginia Cellular	5	No Change

These revised USF fees replace in their entirety the USF fees delineated in the above-referenced section entitled "Fees" in Table 1 (as amended by Modification #2) to Attachment A of Contract VA-020901-ALTL.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020901-ALTL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**MODIFICATION #4  
TO  
CONTRACT NUMBER VA-020901-ALTL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ALLTEL COMMUNICATIONS**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and ALLTEL Communications, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #4 is hereby incorporated into and made an integral part of Contract VA-020901-ALTL, as modified.

The purpose of this Modification #4 is to document both parties' agreement concerning the addition of the "eVA" clause to the Agreement and the replacement of paragraph 52 entitled "Orders (Equipment)" with the clause delineated below.

**Reference:** Contract VA-020901-ALTL, Page 16 of 29 Pages, Paragraph 50 entitled "Modifications"

1. Both above referenced parties agree to the addition of the clause as delineated below, to the subject Agreement, effective upon execution of this Modification #4.

**eVA BUSINESS-TO-GOVERNMENT CONTRACTS:** The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us). AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
  - b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us).
2. Both above referenced parties further agree to delete paragraph 52 entitled "Orders (Equipment)" and replace it in its entirety with the following clause:



## ORDERS (EQUIPMENT)

Authorized ordering officials representing the "Authorized Users" of this Contract may order Equipment from this Contract by one of the following Order methods:

A. eVA

B. Purchase Order: An official Purchase Order form issued by an Authorized User.

C. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT; or its replacement as identified by the COV Legislature.

D. Charge/Credit Card:

- 1) Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
- 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, which is under contract for use by an Authorized User.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020901-ALTL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED  
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND  
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE  
TERMS AND CONDITIONS OF THE CONTRACT.**

ALLTEL COMMUNICATIONS

BY: [Signature]  
NAME: Dan Powell  
TITLE: Market Area President  
DATE: 11-7-03

COMMONWEALTH OF VIRGINIA

BY: [Signature]  
NAME: Joe A. Parr  
TITLE: Tech Contracts Manager  
DATE: 10/16/03

**MODIFICATION # 3  
TO  
CONTRACT NUMBER VA-020901-ALTL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ALLTEL COMMUNICATIONS**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth", or "VITA" (Virginia Information Technologies Agency) and Alltel Communications, hereinafter referred to as "Contractor" or "Alltel", relating to the modification of the above contract (the "Agreement").

Both above referenced parties hereby agree to add a new Service to the Agreement. The new Service and its pricing are defined below.

The effective date of this Modification #3 is August 1, 2003.

**NEW SERVICE: "Pager Notification"**

- \* Pager notification allows an Authorized User to be notified via their pager when a voice message is left in their cell phone voice mailbox.
- \* The cost of Pager Notification is \$1.00 per month, per Authorized User.
- \* The areas in which this feature is available for provisioning are Zones 1, 2, 3, 5, 6, 7 and 8.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020901-ALTL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

ALLTEL COMMUNICATIONS

BY: [Signature]  
NAME: Dominique Mills  
TITLE: VP6071  
DATE: 7/28/03

COMMONWEALTH OF VIRGINIA

BY: [Signature]  
NAME: Jeff Davis  
TITLE: Contracts Manager  
DATE: 7-29-03

May-24-03 01:41am From-

T-787 P.001/001 F-718

**MODIFICATION #2  
TO  
CONTRACT NUMBER VA-020901-ALTL  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
ALLTEL COMMUNICATIONS**

This MODIFICATION #2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology) and ALLTEL COMMUNICATIONS, hereinafter referred to as "Contractor" relating to the modification of Contract VA-020901-ALTL, as amended. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-020901-ALTL.

The purpose of this Modification #2 is to document both parties' agreement concerning Contract price changes, to be effective April 1, 2003.

Reference: a) Page C-13; paragraph 41, entitled "PRICE PROTECTION AND MOST FAVORED CUSTOMER", and b) the section entitled "Fees" in Table 1 to Attachment A, page 25 of 29 of Contract VA-020901-ALTL.

Both parties hereby agree to revise the calculation of the Contract's monthly charges, for the FCC-imposed Universal Service Charge ("FUSC") by using the FCC's universal service contribution factor as follows:

- a. Alltel - Zones 1, 2, 3, 6 and 8: The Contract USF fee will be calculated by taking 28.5% of the total monthly billed amount and multiplying this by 9.1%
- b. Cingular - Zone 4: The Contract USF fee will be calculated by a percentage equal to 2.59% of the total monthly billed amount
- c. US Cellular - Zone 7: The Contract USF fee will be calculated by a percentage equal to 2.57% of the total monthly billed amount
- d. VA Cellular - Zone 5: No change to the Contract USF fee.

These revised USF fees replace in their entirety the USF fees delineated in the above-referenced section entitled "Fees" in Table 1 to Attachment A, of Contract VA-020901-ALTL.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020901-ALTL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

ALLTEL COMMUNICATIONS

BY: 

NAME: Dominique Mills

TITLE: Vice Pres / Gen. Mgr

DATE: 5/22/03

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Robert E. Gleason

TITLE: Technology Contracts Mgr

DATE: 5/23/03

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-020901-ALTL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ALLTEL COMMUNICATIONS**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and ALLTEL Communications, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-020901-ALTL, as modified.

The purpose of this Modification #1 is to document both parties' agreement concerning the deletion of the analog mobile to mobile feature and the increase in the monthly rate for the digital mobile to mobile feature for Zone 4.

**Reference:** Contract VA-020901-ALTL, Page 16 of 29 Pages, Paragraph 50 entitled "Modifications"

Both of the above referenced parties agree to delete the analog "Mobile to Mobile Calls" feature in Table 1 to Attachment "A" of the Contract for Zone 4. In addition, both parties further agree to increase the monthly charge for the digital "Mobile to Mobile Calls" feature in Table 1 to Attachment "A" of the Contract from \$4.95 a month to \$4.99 a month for Zone 4. The "Mobile to Mobile Calls" feature in Table 1 to Attachment "A" of the Contract remains unchanged for all other zones.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020901-ALTL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES  
OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH  
PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE  
CONTRACT.**

ALLTEL COMMUNICATIONS

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

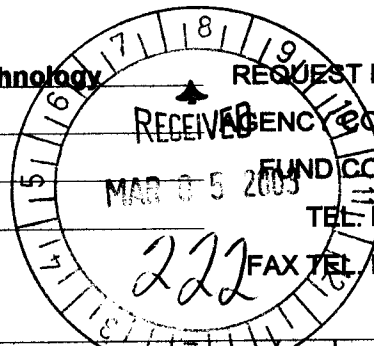
DATE: \_\_\_\_\_



# COMMONWEALTH OF VIRGINIA AGENCY PROCUREMENT REQUEST

## 1. AGENCY INFORMATION

AGENCY: Department of Information Technology REQUEST NO.: 03-0025  
AGENCY DIVISION: Telecommunications AGENCY CODE: 138  
PROGRAM NAMES/CODES: Requisition Number: 345-117 FUND CODE: \_\_\_\_\_  
CONTACT NAME: Stuart L. Thacker TEL. NO.: (804) 371-5543  
FAX TEL. NO.: (804) 225-4933



## 2. ESTIMATED PROCUREMENT COSTS

ITEM	PURCHASE PRICE	RENT OR LEASE/MO.	RENT/LEASE X TERM (MOS.)	TOTAL
HARDWARE			( )	
SOFTWARE			( )	
SERVICES		\$0.00	( )	\$0.00
MAINTENANCE: Monthly			( )	
FINANCE CHARGE		N/A	N/A	
OTHER CHARGES		N/A	N/A	
TOTAL				\$0.00

## 3. SEE PAGE 2 OF THIS FORM: PROJECT DESCRIPTION AND JUSTIFICATION (FEASIBILITY STUDY)

## 4. FUNDING CERTIFICATION

### CERTIFICATION:

*I hereby certify that sufficient funds for this request  
are available under the source(s) indicated.*

### FUND SOURCES:

Cost Center: 345

Billing Element: 31000

Sub-Object Code	Sequence	Suffix
<u>1217</u>	_____	/ _____
_____	_____	/ _____
_____	_____	/ _____
_____	_____	/ _____

### SUBMITTED:

02/24/2003  
Date

Robert H. Davidson  
Name (Type or Print)

Robert H. Davidson  
Signature

Telecommunications  
Director  
Title

## 5. RECOMMENDED FOR APPROVAL

3/10/03  
Date

[Signature]  
Director

DIT Acquisition Services Division

### FOR DIT USE ONLY

DIT APR #: 222

ASSIGNED TO: Hudgins

APPROVAL # 5180

APPROVAL AMOUNT \$: \_\_\_\_\_

DELIVERY ORDER #: mod 1

CONTRACT #: VA-02090-A232

**CONTRACT VA-020901-ALTL  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
ALLTEL COMMUNICATIONS**

**1. SCOPE OF AGREEMENT**

This is an Agreement (the "Agreement") between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "DIT" (Department of Information Technology) and ALLTEL Communications, a Division of ALLTEL Corporation (the "Contractor"), a Delaware corporation having its principal place of business at One Allied Drive, Little Rock, AR 72202. This Agreement contains the Contractual terms and conditions by which the Commonwealth will establish a Master Contract for State Agencies, Institutions, and other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users" to acquire wireless voice services ("Services") and hardware ("Equipment") pursuant to the Commonwealth's Request For Proposal #01-033, dated January 15, 2002 (the "RFP") and the Contractor's proposal, dated February 28, 2002 in response thereto. Hereinafter "Equipment" shall include any necessary software, firmware, and microcode ("Software") integral to the Equipment.

Upon award, all orders for Service will be placed through DIT, and any orders for Equipment will be placed directly with the Contractor by Authorized Users.

**2. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "Software" and "Software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) the Contractor's cost proposal dated February 28, 2002 in response to the Commonwealth's RFP 2001-032 dated January 15, 2002; (2) this document, consisting of Terms and Conditions labeled 1 through 65, Attachment A entitled Product Pricing, Attachment B entitled Transition Schedule, and Attachment C entitled Lobbying Certificate ; (3) the specific sections of the Contractor's proposal dated February 28, 2002 in response to the following specific sections of the Commonwealth's RFP #01-033 dated January 15, 2002: Section 1.29 entitled Participation in State Procurement Transactions by Small Businesses, and Businesses Owned by Women and Minorities, Section 4 entitled Mandatory Requirements, and Section 5 entitled Desirable Requirements; (4) the corresponding sections of the Commonwealth's RFP #01-033 dated January 15, 2002; and (5) all executed Orders and Attachments referencing this Agreement. The foregoing documents represent the complete and final Agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

### **3. AVAILABILITY OF EQUIPMENT**

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

### **4. HARDWARE SPECIFICATION**

Each hardware Product shall conform to all specifications published or provided by the Contractor or manufacturer, including but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, and maintenance.

### **5. MANUALS**

Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

### **6. VOLUME DISCOUNT**

For rate plans that are structured based on individual phones and usage, DIT will deduct a fifteen percent (15%) volume discount from the monthly correct billed amount and remit the remainder.

### **7. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page ([www.dgs.state.va.us/dps/](http://www.dgs.state.va.us/dps/)).

### **8. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

## **9. ANTI-DISCRIMINATION**

By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E ).

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **10. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

## **11. IMMIGRATION REFORM AND CONTROL ACT OF 1986**



By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

## **12. DEBARMENT STATUS**

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

## **13. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

## **14. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

## **15. CLARIFICATION OF TERMS**

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

## **16. PAYMENT**

### **A. To Prime Contractor:**

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or Services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

**B. To Subcontractors:**

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
  - (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

## **17. PRECEDENCE OF TERMS**

Paragraphs 7-17 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

## **18. QUALIFICATIONS OF OFFERORS**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the Services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the goods contemplated therein.

## **19. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and Services conform to the specifications.

## **20. ASSIGNMENT OF CONTRACT**

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

## **21. DEFAULT**

In case of failure to deliver goods or Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

## **22. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

## **23. USE OF BRAND NAMES**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

## **24. TRANSPORTATION AND PACKAGING**

By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

## **25. INSURANCE**

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### **INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

4. Automobile Liability - \$500,000 - Combined single limit.

## **26. ANNOUNCEMENT OF AWARD**

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of ten (10) days.

## **27. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **28. NONDISCRIMINATION OF CONTRACTORS**

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

## **29. NON-APPROPRIATION**

All funds for payment of Equipment, Software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or Services dependent on such federal funds without further obligation.

### **30. CONTRACTUAL RECORDS**

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

### **31. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's proposal includes any goods or Services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or Services, and that such other party has agreed in writing that it has no objection thereto.

### **32. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any Equipment, Software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of Equipment or Software furnished hereunder with any Equipment or Software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such Equipment or Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the Software, the Contractor agrees to take back the infringing Equipment, Software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph 26.

### **33. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or Services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support Services hereunder.

### **34. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, Equipment and/or Services delivered under this Contract. This

limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

### 35. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

### 36. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME				
ADDRESS AND <u>PHONE NUMBER</u>	TYPE GOODS/ <u>SERVICES</u>	<u>ACTUAL DOLLARS</u>	<u>PLANNED DOLLARS</u>	<u>% OF TOTAL CONTRACT</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____



### **37. COMPLIANCE WITH FEDERAL LOBBYING ACT**

A. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

C. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

### **38. NONVISUAL ACCESS TO TECHNOLOGY**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network Services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, Software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access Software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

#### **39. UNIVERSAL SERVICE FUND**

The Contractor agrees to make available to all requesting USF participants, all products and Services as listed and priced herein. The Contractor agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. The Contractor agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of said Contract for USF participation shall be the sole responsibility of the Contractor.

The Contractor warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive Universal Service Fund allocations/disbursements for Services provided pursuant to this Contract to agencies and entities and users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those agencies and institutions. The Contractor also agrees to maintain those qualifications, and to assist agencies and entities in applying for and receiving these allocations/disbursements.

#### **40. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for a period of twenty-four (24) months. The Commonwealth at its sole discretion, may extend this Agreement for three (3) additional twelve (12) month periods at the prices identified herein. The Commonwealth will issue written documentation to the Contractor a minimum of thirty (30) days prior to the end of each renewal period for any extension thereafter.

#### **41. PRICE PROTECTION AND MOST FAVORED CUSTOMER**

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. Contractor agrees and warrants that for all products pursuant to this Contract, the prices are, and will continue to be at or below any prices offered to any "Authorized User" as defined herein.

If for any reason, during the term of this Agreement, and any renewals thereof, the Contractor enters into an Agreement with any Authorized User, for the same products or services offered under this Agreement which results in a price less than that provided under this Agreement, the Commonwealth

shall receive an equivalent reduction in price for such products and services delivered to all Authorized Users under this Agreement from the date that the Contractor provided the lower price to the Authorized User. In the event the Commonwealth becomes aware of an Authorized User, who has received such lower prices, during the Term of this Agreement, DIT will notify the Contractor of such prices for such products and elect to make the more favorable prices applicable to the Commonwealth from the date those prices were available to the Authorized User.

#### **42. SERVICE COMMENCEMENT DATE**

- a. All Services shall commence within twenty-four (24) hours from the receipt of a Telecommunications Services Order issued by DIT, unless stated otherwise on the TSO.
- b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to service commencement date. The State may delay the service commencement date by notifying the Contractor at least ten (10) days before the required service commencement date.
- c. If the Service(s) are not delivered within the time specified herein, the State reserves the right to cancel the award of this Contract or individual Order and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver the proposed Services as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

#### **43. DELIVERY DATE (EQUIPMENT)**

The Contractor shall deliver the Equipment ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Equipment is not completed within fifteen (15) days after the scheduled delivery date, the Commonwealth may cancel either the Agreement or individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least ten (10) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

#### **44. COMMENCEMENT OF ACCEPTANCE TESTING**

The Products and Services shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful system audit or diagnostic test performed at the site which demonstrates, to the satisfaction of the Commonwealth, that all Products and Services meet the minimum design capabilities specified by Contractor. If the Contractor certifies that the Products and Services are ready to begin acceptance testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and Services and change the delivery date accordingly.

#### **45. REQUIRED PERFORMANCE LEVEL**

To qualify for acceptance, all Products and Services must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement for ten (10) consecutive days. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product or Service does not meet the standard of performance during the initial ten (10) consecutive days, the acceptance period shall continue on a day-to-day basis until all Products and Services concurrently meet the standard of performance for ten (10) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay shall not exceed ten (10) consecutive days.

#### **46. RECORDS**

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

#### **47. BREACH**

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required Service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a notice identifying such noncompliance; or (d) fails to provide a written response to a notice of noncompliance within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products and Services shall be borne by the Contractor. In no event shall

any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

#### **48. BILLING DATA**

The Contractor shall provide to DIT a consolidated monthly bill for all Services provided to all Authorized Users under this Agreement in hardcopy and electronic format. The consolidated monthly bill must contain all of the information required by paragraph 4.8. herein.

If Equipment is purchased from the Contractor by Authorized Users, it will be billed directly to the Authorized User at the purchase price.

#### **49. INVOICES**

All invoices shall be rendered promptly to DIT after all Services covered by the invoice have been accepted. All payments for cellular air time shall be monthly in arrears and shall be addressed to the Controller, DIT. No invoice may include any costs other than those identified in the Agreement or the individual TSO referencing this Contract. The Commonwealth will not pay for any charges that are over 120 days old (120 days old is defined as 120 days from date of occurrence) and only appear on a magnetic tape subsequent to that 120 day period. Invoices shall provide at a minimum:

1. Type and description of the Service;
2. Serial number, if any;
3. Charge for each Service;;
4. This Contract Number/TSO Number, and;
5. Contractor's Federal Identification Number (FIN)

#### **50. MODIFICATIONS**

This Contract may be modified in accordance with Section 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless it is in writing on paper and signed in ink by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, DIT or his duly designated alternate, and for the Contractor the person signing the Contract.

Any Contract issued on a firm fixed price basis may not be increased more than twenty-five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

## **51. TELECOMMUNICATIONS SERVICES ORDER (TSO)**

DIT retains the exclusive authority to order all Services delineated herein. The Commonwealth will issue Telecommunications Services Orders (TSOs) to the Contractor for the Services identified herein. To be valid, the TSO must cite the Contract Number identified in Block #1, DIT form 62, and must be signed by an Ordering Officer authorized to bind the Commonwealth contractually for telecommunications Services acquired under this Agreement. The TSO must identify the Service(s) to be acquired, the price for each Service, and the required Service Commencement Date for each Service.

Upon receipt of a TSO via either regular mail, facsimile, or electronically, the Contractor shall process the TSO and return a Service Order identifying the following information:

1. A verification that the TSO is technically correct;
2. The date the Services will begin;
3. A verification of the charge for each item (Service) to be provided, and;
4. Other applicable administrative information necessary to deliver the Services requested on the TSO.

## **52. ORDERS (EQUIPMENT)**

Authorized Users may order Equipment from this Contract by one of the following methods:

- a. Issuing Agency Purchase Order, Form DBS-41-001
- b. Charge Card:
  - 1) An ordering and payment process under Contract with American Express (AMEX). Each order must not exceed \$5,000.00 or the then current charge card limit. Payment will be made to Contractor by AMEX within three (3) business days.
  - 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.
- c. A Delivery Order issued by the Acquisition Services Division, DIT.

This ordering authority is limited to issuing orders for the Equipment available under this Agreement. Under no circumstances shall any Authorized User or other entity have the authority to modify this Agreement.

### **53. ORDERING OFFICERS FOR SERVICES**

The Contracts Manager, Acquisition Services Division, DIT, appoints the following authorized Ordering Officers. The Ordering Officer(s) authority is limited to ordering the Services as identified herein, by written TSO(s) which reference this Contract, and does not include the ability to add any additional Services not set forth herein or to change or modify any prices, terms and or conditions agreed upon by the parties hereto. All changes to this Contract must be incorporated in a formal modification to this Contract by the parties identified in paragraph entitled "Modifications" of this Contract.

The Contractor is hereby notified that the Commonwealth will only make payment only against valid TSOs executed by an authorized Ordering Officer and confirmed by the Contractor. Contractor shall be advised in writing by the Contracts Manager, DIT or his appointed designee, of any change in the identity of Ordering Officers.

Ordering Officers are Phil Johnson, Don Spangler and Margaret Moran.

### **54. TERMINATION FOR CONVENIENCE**

This Contract may be terminated, in whole or in part, upon thirty (30) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

### **55. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER**

Any individual Order placed under this Agreement may be terminated, in whole or in part, by an Authorized User for its convenience, at any time up to ten (10) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.

### **56. FAILURE TO DELIVER**

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the Services set forth in the Schedule, Commonwealth may, in its own discretion, give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the Services from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the Services which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this Agreement and the laws of the Commonwealth of Virginia.

## **57. RISK OF LOSS**

For any Equipment purchased, the Contractor shall have the risk of loss or damage to all Equipment until clear and unrestricted title to such Equipment is transferred to the Commonwealth

## **58. TITLE TO EQUIPMENT**

Clear and unrestricted title to all Equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

## **59. ENGINEERING CHANGES**

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the Commonwealth at no additional charge for a period of one (1) year from the date of installation. The Commonwealth reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

## **60. SUPPLIES**

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the Commonwealth shall conform to the Contractor's published specifications provided to the Commonwealth at the time of Equipment installation. The Commonwealth reserves the right to acquire such supplies from any Contractor of its choice.

## **61. WARRANTY (EQUIPMENT)**

Contractor shall provide twelve months of Depot (return to vendor) warranty Services for all Equipment purchased under this Agreement at no cost to the Commonwealth. Such warranty support shall include all labor and materials necessary to keep the Equipment in operational condition, in accordance with the Original Equipment Manufacturers (OEMs) then current published specifications. Upon delivery of a malfunctioning unit, Contractor shall provide a loaner phone within one (1) hour, pre-programmed to the Commonwealth user, at no cost. The Contractor will send the broken telephone to the OEM for repair or replacement at the Contractor's expense. If the damaged phone is found to be unrepairable, a new phone will be issued for replacement at no cost to the Commonwealth. The replacement phone will be programmed for the user's phone number at no cost. This warranty does not apply to Equipment malfunctions attributable to user misuse or neglect.

All parts used under this Agreement must be new parts or refurbished parts certifiable as new. Parts which have been replaced shall become the property of the Contractor.

**NOTWITHSTANDING ANY PROVISION IN THIS SOLICITATION, ALL WARRANTIES SHALL INCLUDE SUPPORT FOR ALL SOFTWARE, FIRMWARE AND MICROCODE. ALL WARRANTIES SHALL BE CONSIDERED TO BE PREFORMANCE**



**BASED AND THEREFORE THE CONTRACTOR IS RESPONSIBLE FOR ANY REPORTED FAILURE OF THE EQUIPMENT.**

**62. PRINCIPAL PERIOD OF MAINTENANCE**

The Principal Period of Maintenance (PPM) shall be Monday through Friday, 8 a. m. to 5 p. m., eastern time, Commonwealth holidays excluded. The Commonwealth, by giving fifteen (15) days written notice to the Contractor, may designate different hours or days for PPM.

**63. CONTRACTOR'S EQUIPMENT WARRANTY POINT-OF-CONTACT**

The Contractor shall provide the Commonwealth with designated points of contact and toll-free telephone numbers for warranty Services.

**64. SERVICES WARRANTY**

All Services purchased under this Agreement remain under warranty for the time period commencing after acceptance by the Commonwealth or Authorized User and continuing to expiration of the Agreement, or discontinuance of the Services at the discretion of the Commonwealth or Authorized User.

Contractor shall deliver and maintain the Services as described herein. In addition, the Contractor shall provide a single point of contact for the reporting of Service problems encountered by the Authorized User. The Contractor shall provide local Service representatives for the reporting of Service problems during normal business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding state holidays. The Contractor shall also provide an "800" telephone number twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays for the reporting of Service problems during non-business hours.

**65. SERVICE DOWNTIME CREDITS**

The Authorized User shall be rebated, or credited, a prorated hourly portion of the applicable monthly Service charges for each occurrence during which the Authorized User is denied use of the Service for eight (8) hours or more during any consecutive thirty (30) day period. The rebate shall apply to the initial eight (8) hours and all additional hours, or portions thereof, during which the Authorized User is denied access to the Service. In addition, the Commonwealth shall be rebated, or credited, all applicable monthly Service charges for any twenty-four (24) hour period of sustained outage of Services. Contractor provided rebates or credits shall never exceed the cost of the Services

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

**CONTRACTOR**

**COMMONWEALTH OF VIRGINIA**

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ Jeff Davis

**TITLE:** \_\_\_\_\_ Contracts Manager

**DATE:** \_\_\_\_\_

**ATTACHMENT "A"**  
**TO**  
**AGREEMENT VA-020901-ALTL**

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-020901-ALTL between ALLTEL Communications and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "A" and Agreement VA-020901-ALTL, the provisions of Agreement VA-020901-ALTL shall control.

**SERVICES AND PRODUCTS (EQUIPMENT) PRICES**

A listing of all prices for Services and products available under this Agreement is included herein as Table 1 to this Attachment "A". The rate plans and prices contained herein are effective November 1, 2002. Rate plans and pricing thereof contained in Contract VA-980301-360 remain in effect through October 31, 2002.

**ORDERS**

1. **Services:** DIT will issue Telecommunications Services Orders (TSOs) to the Contractor for the Services identified herein. The following individuals are appointed as authorized Ordering Officers whose authority is limited to ordering the Services as identified herein, by written TSO(s) which reference this Contract, and does not include the ability to add any additional Services not set forth herein or to change or modify any prices, terms, and or conditions agreed upon by the parties hereto.
2. **Equipment:** Authorized Users may order Equipment identified herein directly from the Contractor by one of the following methods:
  - a. Issuing Agency Purchase Order, Form DBS-41-001
  - b. Charge Card:
    - 1) An ordering and payment process under Contract with American Express (AMEX). Each order must not exceed \$5,000.00 or the then current charge card limit. Payment will be made to Contractor by AMEX within three (3) business days.
    - 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.
  - c. A Delivery Order issued by the Acquisition Services Division, DIT.

## **SERVICES COMMENCEMENT DATE**

All Services shall commence within twenty-four (24) hours from the receipt of a Telecommunications Services Order (TSO) issued by DIT, unless stated otherwise on the TSO.

## **EQUIPMENT DELIVERY DATE**

The Contractor shall deliver the Equipment ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement.

## **SERVICES BILLING**

1. The Contractor shall provide a single monthly bill to DIT that:
2. Includes charges, from all participating carriers, for the billing period.
3. Contains no charges over 90 days old.
4. Contains rates consistent with the Contract.
5. One (1) paper bill, summarizing all charges and discounts.
6. A magnetic tape (IBM EBCDIC 16 or 32-track cartridge tape) of all call detail information from all participating carriers. CD-ROM with identical information may be proposed as an alternative. This tape/CD shall include, as a minimum:
  - Originator's 10-digit phone number (in-bound and out-bound)
  - 10-digit destination number (in-bound and out-bound)
  - Calling location (Tower Location, City, County, State, etc.)
  - Destination location
  - Time of call beginning
  - Duration or Ending Time of Call
  - Roaming Indicator
  - Long distance minutes and charges, if applicable
  - Airtime minutes (may be the same as duration)
  - Airtime charges, if applicable
  - Other charges that are valid on a "per call" basis

DIT will deduct fifteen percent (15%) from the total consolidated monthly magnetic tape for each month and remit the remainder in accordance with the terms and conditions as provided herein.

## **EQUIPMENT BILLING**

The Contractor shall bill the Authorized User directly for any Equipment purchased from this Agreement.

## **EQUIPMENT WARRANTY**

Contractor shall provide twelve months of Depot (return to vendor) warranty Services for all Equipment purchased under this Agreement at no cost to the Commonwealth. Such warranty support shall include all labor and materials necessary to keep the Equipment in operational condition, in accordance with the Original Equipment Manufacturers (OEMs) then current published specifications. Upon delivery of a malfunctioning unit, Contractor shall provide a loaner phone within one (1) hour, pre-programmed to the Commonwealth user, at no cost. The Contractor will send the broken telephone to the OEM for repair or replacement at the Contractor's expense. If the damaged phone is found to be unrepairable, a new phone will be issued for replacement at no cost to the Commonwealth. The replacement phone will be programmed for the user's phone number at no cost. This warranty does not apply to Equipment malfunctions attributable to user misuse or neglect.

All parts used under this Agreement must be new parts or refurbished parts certifiable as new. Parts which have been replaced shall become the property of the Contractor.

## **CONTRACTOR POINTS OF CONTACT**

### Commonwealth of Virginia Coordinator

Coley Eckenrode  
ALLTEL Communications  
9201 Arboretum Parkway, STE 200  
Richmond, VA 23236  
(804) 840-5000

## **DIT POINTS OF CONTACT**

### Contract Compliance Information

T. J. Hudson, CPPB, VCO  
Contracts Administrator  
Phone: 1-804-371-5971  
Email: [thudson@dit.state.va.us](mailto:thudson@dit.state.va.us)  
Fax: 1-804-371-5969

### Technical Information

Paul D. Hoppes  
Telecommunications Engineer  
Phone: 1-804-371-5580  
Email Address: [phoppes@dit.state.va.us](mailto:phoppes@dit.state.va.us)  
Fax: 1-804-786-4177

**Table 1. Rate Plans**

**Table 2. Equipment Price Listing**

**ATTACHMENT "B"**  
**TO**  
**AGREEMENT VA-020901-ALTL**

**TRANSITION SCHEDULE**

Attachment "B" is hereby incorporated into and made an integral part of Agreement Number VA-020901-ALTL between ALLTEL Communications and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "B" and Agreement VA-020901-ALTL, the provisions of Agreement VA-020901-ALTL shall control.

**NEW RATE PLANS**

On October 1, 2002 DIT will convert all current rate plans to a conversion default plan. However, Authorized Users may begin submitting Telecommunications Services Requests (TSRs) to DIT to convert existing cellular phone numbers to the new rate plans contained herein. The TSRs must be received by DIT no later than October 25, 2002 in order to become effective November 1, 2002.

Authorized Users may continue to use the default rate plan or submit a TSR to DIT to convert to any of the plans contained herein. TSRs requesting conversion of rate plans not received by October 25, 2002 will not be converted to the requested rate plan until December 1, 2002.

If a digital rate plan is selected by the Authorized User, an Order must be submitted to Alltel by the Authorized User in the event a digital handset is not in use with the current phone number.

**INSTALLATION OF PRL LIST INTO HANDSETS**

New PRL lists must be installed into all handsets in current use within Alltel zones (Zones 1, 2, 3, 6, and 8) and U. S. Cellular Zone 7.

Alltel will contact each Authorized User weekly on Tuesday or Thursday between 9:00 a. m. and noon from the effective date of this Agreement through November 30, 2002 to install an updated software program into digital handsets. An Alltel representative will contact the Authorized User's Procurement Official and/or Telecommunications Coordinator to set the date and time for the installation. Wireless telephone users should contact their appropriate Procurement Official or Telecommunications Coordinator for information about the scheduled date(s) for the installation of the software. The installation schedule should be confirmed no later than October 31, 2002.

DIT will provide contact information to the Contractor for the Authorized Users. Alltel will contact the Authorized Users directly to set up the date and time for the installations. Alltel will provide DIT with the wireless telephone numbers that have converted to the new software weekly. This may be accomplished electronically. Alltel will coordinate with the DIT Communications Engineer to provide a representative at DIT weekly through October 31, 2002 on Tuesday, Wednesday and Thursday from 9:00 a. m. to 1:00 p. m. DIT will provide a work area for the Alltel representative.



This plan may be modified only by a mutual written agreement by both parties to the Contract.

**ATTACHMENT "C"**  
**TO**  
**AGREEMENT VA-020901-ALTL**

***CERTIFICATION REGARDING LOBBYING***

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative Agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_